

Testimony of Susan E. Reed re: HB 4993
Michigan House of Representatives
Committee on Insurance
May 24, 2012

My name is Susan E. Reed. I am Supervising Attorney at the Michigan Immigrant Rights Center and serve as co-chair of the advocacy committee of the Michigan chapter of the American Immigration Lawyers' Association and as a steering committee member of the Michigan Coalition for Immigrant and Refugee Rights.

As an immigration attorney, I counsel human beings who are noncitizens, including persons unlawfully present, on a daily basis. And, just like citizens of this country who have failed to file a tax form or perhaps had one filed by an incompetent preparer, they are people who have violated a Federal civil law. Being out of status is not, in fact, a crime. People who are not lawfully present may be aware that they are out of status, and they may not be. They might have made conscious decisions that led to lack of status or they might be out of status through administrative agency error or the actions or omissions of a family member or employer. I would like to illustrate this with the stories of three individuals. I have changed their names and modified some details to protect their identities but the immigration status timelines I am presenting are based on real stories and accurately represent the ways in which real people experience our complex immigration system.

1) Nelson is an ordained minister in a large evangelical Christian denomination. He, his wife, and his eldest daughter applied for asylum because they feared being persecuted in their home country because of their Christian beliefs. The case and an appeal took more than ten years to resolve, but ultimately they were denied asylum and ordered removed from the U.S. However, they were later granted Temporary Protected Status because of a natural disaster that later happened in their country. In addition, Nelson was approved for a permanent visa as a religious worker after being sponsored by the church where he served as pastor. However, he received bad legal advice about whether or not to renew his Temporary Protected Status (TPS) while his family's applications for permanent residence based on those applications were being prepared and adjudicated. So, Nelson and his family experienced another period of unlawful presence between the expiration of their TPS and the filing of their applications for adjustment of status to lawful permanent resident. (Nelson also spent time in immigration detention at the Calhoun County Jail because of that error.) However, Nelson's family's applications were eventually approved and all are now lawful permanent residents, commonly known as "green card holders."

2) Cheryl is a citizen of Australia who came to the U.S. with her two teenaged children on a long-term employment-based visa to work as a healthcare professional. She later married a U.S. citizen and became a conditional permanent resident or "temporary green card holder" based on her marriage. She properly and timely filed a petition to remove

the condition on her residence, but due to a government clerical error, her petition was denied by United States Citizenship and Immigration Services and her immigration status as well as the status of her children was automatically terminated. She was unlawfully present for four weeks before our office was able to demonstrate to USCIS that it had wrongly denied the petition. Cheryl and her children are now lawful permanent residents and they are now considered by the Department of Homeland Security to have been residents since the date of the initial grant of conditional resident status, but had an accident occurred it is unclear whether the present bill would regard them as having been unlawfully present.

3) Juanita was born in Mexico. She was living in Michigan and was removed from the custody of her biological family by the Michigan Department of Human Services at age 2 due to abuse and neglect and parental rights were terminated. She was adopted by U.S. citizens who assumed, along with the State of Michigan and the private adoption agency, that her adoption by two U.S. citizens automatically made her a U.S. citizen. Everyone was mistaken and with devastating consequences. She is now 21 years old and has just learned that she does not have legal immigration status nor is there a way for her to obtain legal immigration status in the near future now that she is an adult. Her parents have filed a petition for her as the adult daughter of a U.S. citizen. Currently, the State Department is processing petitions that were filed in 1993 in that category. In addition, because Juanita cannot prove whether she initially entered the United States legally as an infant, current law will require her to be processed abroad when her petition is current. When she goes abroad, she will trigger a ten year bar to her reentry that may or may not be waived based on hardship. She has not *ever* been lawfully present although she and her family believed for decades that she was a U.S. citizen.

These are not unique or rare cases. As my examples illustrated, some people who are without status on any given day will sooner or later get back into status. Presumably this bill would mean that *all* injured Michigan accident victims would be required to prove what their citizenship or immigration status was when an accident happened, which both citizens and noncitizens might struggle to do.¹ If this bill becomes law, unlawfully present persons injured in auto accidents will still be living in the State of Michigan, and the family and communities that love them will still seek to ensure that they receive care and rehabilitation. In addition, Federal law will require hospitals to provide life saving emergency treatment regardless of insurance or immigration status. Creating this coverage gap will create unnecessary and devastating hardship, deprivation, and “red tape.” How will insurance companies obtain information and make complex legal determinations about who does and who does not have legal immigration status? Who will bear the cost of treatment, recovery, and rehabilitation when personal injury protection benefits are denied based on lack of status. The nonpartisan House Fiscal Agency Legislative Analysis makes clear that in addition to hospitals, it will be

¹ See, e.g., *Citizens Without Proof*, Brennan Center for Justice at New York University School of Law, 2006, available at: http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

ultimately be consumers and taxpayers.² In fact, only insurance companies stand to benefit in any way. They will have no incentive to investigate or monitor status before collecting premiums, but will have tremendous incentive to seek opportunities to refuse payment and receive a windfall once an accident and injury has occurred. They are not equipped to make accurate or disinterested technical determinations about who was legally present at the time of an accident.

I urge you to consider the impact that this legislation will have not only on injured people who may be unlawfully present, but on their U.S. citizen families and communities, and on all healthcare consumers and taxpayers in our state. I thank you for your attention this morning.

² House Fiscal Agency Legislative Analysis of HB 4993, available at:
<http://www.legislature.mi.gov/%28S%28dt43fa452snnq5jwgxlmug45%29%29/mileg.aspx?page=getObject&objectName=2011-HB-4993>